CF0000088248

NOTED

(9)

IN THE HIGH COURT OF JUDICATURE : AT JABALPUR.

CRIMINAL REVISION NO. 1216 /2000.

1. Dharam Singh Sahu son of Radheshyam Sahu, aged 34 years,

2. Sukhmabai wife of Radheshyam Sahu, aged 55 years,

Both residents of Dhobanpuri, Police Station Gurur, District Durg (MP).

... APPLICANTS

Vs.

State of Madhya Pradesh ... NON-APPLICANT.

CRIMINAL REVISION UNDER SECTION 397/ 401 OF THE CODE OF CRIMINAL PROCEDURE.

.....

AFR.

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.REVISION NO. 1216/2000.

Dharam Singh and another : APPLICANTS.

VERSUS

State of M.P. : State of M.P.

O R D E R

(Passed on 9.3.2001)

By this petition under section 397 / 401 of the Code of Criminal Procedure,the applicants seek to challenge the correctness,validity and propriety of the order dated 29.5.2000 passed in S.T.No. 38/2000 by the learned Additional Sessions Judge Balod (Durg) framing the charges against the applicants for offence punishable under sections 306 and 498-A IPC.

2. The prosecution case in brief is that one Teminbai D/o Bhikamlal and Hiribai was married to applicant no.1 Dharamsingh somewhere in the year 1992, The applicant no.2 Sukhmabai is the mother of Dharamsingh and was mother-in-law of deceased Teminbai. Out of the wedlock Dharamsingh and Teminbai were blessed with three children.

3. According to the applicants,Teminbai was keeping unwell for long time, therefore,time and again she was treated by the doctors and in the

3rd week of January, 1999, she was admitted in the hospital. On 20.1.99 said Teminbai consumed poison and thereby committed suicide.

4. Immediately after the death inquest was made on 21.1.99 in which Bhikamlal, father of the deceased did not make any allegation against the applicants. It appears that some complaint was made by somebody in the name of Bhikamlal, therefore, he again gave the statement. On 12.2.99 Bhikamlal in his subsequent statement submitted to the police that he had no complaint against the present applicants. On 8.4.99 the S.D.O. (P) submitted his report that Bhikamlal was denying the submission of the complaint and as he was not making any allegations against the applicants, the present was not a fit case for filing the challan against the applicants. He however submitted that final report be submitted by the Police.

5. All of a sudden on 14.6.99 Bhikamlal and Hiri Bai started making allegations against the present applicants and started asserting that applicant no.1 Dharamsingh was having some illicit relations with one Thanwarinbai and on earlier occasion the applicants treated the deceased with cruelty and compelled her to go for abortion. They also stated that even at the time of second child the applicant Dharamsingh required the wife to go for abortion but this time Teminbai did not go for abortion and gave birth to Resmabai. In their statement they submitted that on earlier occasion they did not say anything against the present applicants either because of their request

(T3B)

or because of intimidation. But as Bhikamlal found himself restless he though proper to make report against the accused persons.

6. The learned counsel for the applicants submits that in view of the divergence in the statements of Bhikamlal,Hiribai and others,present is a case for discharge of the applicants because no reliance can be placed on the statement of Bhikamlal and Hiribai and in any case from the statement of Thanwarinbai with whom illicit relations have been alleged, it would appear that Dharamsingh was treating her as sister,therefore,and, as no explanation is coming forth from the side of the prosecution, relating to earlier statement of Bhikamlal and Hiribai ,they can not be relied upon and the applicants deserve to be discharged. On the other hand learned counsel for the State submits that whether the statement of Bhikamlal dated 21.1.99 and 12.2.99 on the one side are to be relied upon , or the statements recorded on 14.6.99 are to be relied-upon, has to be considered by the trial Court during the course of trial. According to him said Bhikamlal is yet to be examined and if he makes a proper case and gives a justifiable explanation in relation to the earlier statements,then the court may or may not convict the applicants but, as submitted by Shri Singh , present is not the stage to appreciate the evidence

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7. I have heard the parties at length and have gone through the documents submitted by the applicants and the case-diary papers.

8. True it is that deceased Teminbai died on 20.1.99 and on 21.1.99 the father of the deceased did not make any allegations against the present applicants. It is also true that on 12.2.99 Bhikamlal again did not make any allegation against the present applicants but the fact remains that on 14.6.99 Bhikamlal and Hiribai did make serious allegations against the present applicants. It would be for the trial court to see whether the very first statement of Bhikamlal is to be relied upon or his changed version with any explanation by him has to be relied upon. At this stage if the court is required to examine the correctness and reliability of the two sets of the statements then this court will have to record a finding that the applicants have committed an offence or not. It is not expected in a criminal revision that the Revisional Court should scrutinise the evidence meticulously and should record its findings. If the evidence available on record supports framing of the charges then the revisional court would not interfere in such matter. The interference by revisional court is permissible only in cases where there is no evidence or there is no legal evidence to connect the accused with the alleged crime. The revisional court may also exercise its powers in a case where the evidence is absolutely shaky or is moon-shine and if the evidence available on

record is accepted as it is then too the same is not likely to lead to conviction. The revisional Court can also exercise its powers in a case where the prosecution in itself is contrary to law or is bad because of a particular ban imposed under the statutes. Revisional Court is not authorised to examine the evidence meticulously or scrutinise the same nor the revisional court is permitted to look into the evidence as if it is a trial Court.

8. In the present case the evidence which is available on record says that first of the statements made by Bhikamlal were because of pressure/ intimidation exerted/extended by the present applicants. Whether the prosecution proves a the cause of the death and satisfies the judicial conscience of the trial court in relation to the explanation submitted by the witnesses, would be a question to be considered by the said court.

9. At this stage, it would not be possible for this court to enter into the controversial fact and record finding either in favour of the state or in favour of the accused.

10. The applicants would have fullest liberty to defend their case, project their defence and confront the witnesses with their earlier statements. I would leave it to the judicial discretion of the trial court to record a finding

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in accordance with law.

At this stage, I find no reason to interfere in the matter, and the petition deserves to and is accordingly dismissed.

Any observation made in this order if it touches the merit of the matter, the same shall not affect the discretion and jurisdiction of the trial Court because the said observations have been made and the details have been given for the purposes of disposal of this revision only.

The petition is accordingly dismissed.

Sd/-
R.S. Garg
Judge

Jyotishi